

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JOHN W. DALTON JR.,

Petitioner,

vs.

ROB JEFFREYS,

Respondent.

4:22CV3269

MEMORANDUM AND ORDER

This matter is before the court on Petitioner's Motion for Copies (the "Motion for Copies"), [Filing No. 21](#), Motion to Request Documents (the "Motion for Documents"), [Filing No. 22](#), Motion for Complete Case File (the "Motion for Case File"), [Filing No. 23](#), Motion to "Request Doc# Files in Response to Summary Judgment" (the "Motion for Doc# Files") (collectively the "Document Production Motions"), [Filing No. 24](#), Motion for Extension of Time (the "Motion for Extension"), [Filing No. 28](#), and a second Motion to "Request Doc# Files in Response to Summary Judgment" (the "Second Motion for Doc# Files"), [Filing No. 34](#).

On July 24, 2023, Respondent filed a Motion for Summary Judgment (the "MSJ"), seeking dismissal of the Petitioner's Petition solely on the basis of Petitioner's failure to file his Petition within the one-year limitations period set forth in 28 U.S.C. § 2244(d). [Filing No. 17](#). On that same date, Respondent filed a designation of state court records, [Filing No. 18](#), a statement of undisputed material facts, [Filing No. 19](#), and a brief, [Filing](#)

No. 20, all in support of his MSJ. On August 21, 2023, along with the Document Production Motions, Petitioner filed an objection to the MSJ (the “Objection”), [Filing No. 25](#), a brief in support of the Objection, [Filing No. 26](#), and the Motion for Extension, [Filing No. 28](#), which this Court construes as seeking additional time to supplement his Objection after the Document Production Motions are resolved.

In the Document Production Motions, [Filing Nos. 21, 22, 23, and 24](#), Petitioner appeared to seek production of docket numbers, transcripts, and other state court filings alleging such information was required to adequately respond to Respondent’s MSJ, [Filing No. 17](#). On August 30, 2023, this Court ordered Respondent to file a response to the Document Production Motions and delayed ruling on the Petitioner’s Document Production Motions and his Motion for Extension until Respondent’s response to the Document Production Motions was filed. [Filing No. 29](#). On October 30, 2023, Respondent, following the granting of a motion to extend the deadline to respond, see [Filing No. 30](#) and [Filing No. 31](#) (text order), timely filed his response, [Filing No. 33](#), and a supplement to the state court record, [Filing No. 32](#). Respondent described his attempt to respond to Petitioner’s Document Production Motions as follows:

In Respondent’s original Designation of State Court Records in Support of Motion for Summary Judgment, Respondent filed all transcripts before the Nebraska Supreme Court in all three of Dalton’s state appeals. Respondent also filed the docket sheet for each state appeal as well as the Memorandum Opinion filed by the Nebraska Supreme Court in Dalton’s second appeal as it cannot be accessed on Westlaw.

After reviewing Dalton’s Document Production Motions, Respondent has filed a Supplemental Designation of State Court Records in Support of Motion for Summary Judgment, which includes both bill of exceptions filed in Dalton’s state appeals as well as all briefs filed by both parties in Dalton’s state appeals. Thus, Respondent has now filed with this Court all briefs, filings, and records that were before the Nebraska Supreme Court in Dalton’s three state appeals. Any other documents requested by Dalton in

his Document Production Motions, such as police reports, were not filed with the Nebraska Supreme Court during Dalton's state appeals and are not in Respondent's possession.

[Filing No. 33 at 1–2](#) (internal citations omitted).

On November 20, 2023, Petitioner filed his Second Motion for Doc# Files, presumably requesting additional documents after review of the documents produced by Respondent in response to his Document Production Motions. [Filing No. 34](#). Petitioner makes specific requests for the following additional documents: (1) docket transcripts of Petitioner's July 22, 2019 deposition to establish his ineffective assistance of counsel claim for his prior counsel Jerry M. Hug; and (2) police reports, statements, DNA, and all documents from his case file to establish his ineffective assistance of counsel claim for his prior counsel Cindy Tate. *Id. at 1–2*. As Respondent responded to the Document Production Motions, producing additional records, [Filing No. 32](#), and as Petitioner presents no argument that Respondent's response to the Document Production Motions was insufficient, see [Filing No. 34](#), the Document Production Motions shall be denied as moot.

In relation to the documents requested in the Second Motion for Doc# Files, it is clear from the documents requested that Petitioner seeks additional documents not relevant to addressing the MSJ, as the MSJ seeks dismissal of this case on a statute of limitations basis alone and all the documents requested by Petitioner relate to his ineffective assistance of counsel claims. *Compare* [Filing No. 17](#) with [Filing No. 34 at 1–2](#). As documents potentially relevant to ineffective assistance of counsel claims are only necessary if the MSJ is denied and the case proceeds, Petitioner's Second Motion for Doc# Files shall be denied as premature.

IT IS THEREFORE ORDERED that:

1. Respondent having adequately responded to Petitioner's Document Production Motions, [Filing Nos. 21](#), [22](#), [23](#), and [24](#), they are denied as moot.
2. Petitioner's Second Motion for Doc# Files, [Filing No. 34](#), is denied as premature.
3. Petitioner's Motion for Extension, [Filing No. 28](#), is granted. Petitioner shall have through and until January 3, 2024, to supplement his response to Respondent's Motion for Summary Judgment, [Filing No. 17](#), addressing only the arguments presented by Respondent and any defenses Petitioner may have. If Petitioner does not file a supplemental response by the January 3, 2024, deadline, this matter will be considered fully submitted and ripe for decision.
4. The Clerk's Office is directed to set the following pro se case management deadline: **January 3, 2024**: check for Petitioner's supplemental objection to Motion for Summary Judgment.

Dated this 1st day of December, 2023.

BY THE COURT:

A handwritten signature in black ink, appearing to read "J F Bataillon", with a stylized flourish at the end.

Joseph F. Bataillon
Senior United States District Court